

16-10b-101. Title.

This chapter is known as the "Benefit Corporation Act."

Enacted by Chapter 394, 2014 General Session

16-10b-102. Application and effect of chapter.

- (1) This chapter applies to a benefit corporation organized under this chapter.
- (2) The existence of a provision of this chapter does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation. This chapter does not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation.
- (3) (a) Except as otherwise provided in this chapter, Chapter 10a, Utah Revised Business Corporation Act, is applicable to a benefit corporation.
- (b) A benefit corporation may be subject simultaneously to this chapter and other chapters of this title, including Chapter 11, Professional Corporation Act.
- (c) This chapter controls over Chapter 10a, Utah Revised Business Corporation Act, and Chapter 11, Professional Corporation Act, or other laws.
- (4) The articles of incorporation or bylaws of a benefit corporation may not limit, be inconsistent with, or supersede a provision of this chapter.

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16-10b-103. Definitions.

As used in this chapter:

- (1) "Annual benefit report" means a report required under Section 16-10b-401.
- (2) "Benefit corporation" means a business corporation:
 - (a) that elects to become subject to this chapter; and
 - (b) the status of which as a benefit corporation has not been terminated.
- (3) "Benefit director" means the director designated as the benefit director of a benefit corporation under Section 16-10b-302.
- (4) "Benefit enforcement proceeding" means a proceeding in a court of competent jurisdiction for:
 - (a) failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or
 - (b) a violation of an obligation, duty, or standard of conduct under this chapter.
- (5) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under Section 16-10b-304.
- (6) "Business corporation" means a corporation formed under Chapter 10a, Utah Revised Business Corporation Act, or Chapter 11, Professional Corporation Act.
- (7) "Division" means the Division of Corporations and Commercial Code.
- (8) "Executive officer" means:
 - (a) a benefit corporation's president;
 - (b) a vice president of the benefit corporation in charge of a principal business unit, division, or function; or
 - (c) any other officer who performs a policy-making function for the benefit corporation.

(9) "General public benefit" means a material positive impact on society and the environment:

- (a) taken as a whole;
- (b) assessed against a third-party standard; and
- (c) from the business of a benefit corporation.

(10) "Immediate family" means a parent, spouse, surviving spouse, child, or sibling of a person.

(11) (a) "Independent" means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

(b) Serving as a benefit director or benefit officer does not make an individual not independent.

(c) A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if one or more of the following apply:

(i) the individual is, or has been within the last three years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation;

(ii) an immediate family member of the individual is, or has been within the last three years, an executive officer other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation; or

(iii) there is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation, calculated as if all outstanding rights to acquire equity interests in the benefit corporation had been exercised, by:

(A) the individual; or

(B) an entity of which the individual is a director, an officer, or a manager, or in which the individual owns beneficially or of record 5% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(12) "Minimum status vote" means:

(a) in the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) the shareholders of every class or series may vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of a class or series; or

(ii) the corporate action is required to be approved by vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action; or

(b) in the case of a domestic entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) the holders of every class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity may vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of a class or series; or

(ii) the action must be approved by vote or consent of the holders described in Subsection (12)(b)(i) entitled to cast at least two-thirds of the votes or consents that all

of those holders are entitled to cast on the action.

(13) "Publicly traded corporation" means a business corporation that has shares listed on a national securities exchange or traded in a market maintained by one or more members of a national securities association.

(14) "Specific public benefit" includes:

(a) providing low-income or underserved individuals or communities with beneficial products or services;

(b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(c) protecting or restoring the environment;

(d) improving human health;

(e) promoting the arts, sciences, or advancement of knowledge;

(f) increasing the flow of capital to entities with a purpose to benefit society or the environment; and

(g) conferring any other particular benefit on society or the environment.

(15) "Subsidiary" means, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(16) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(a) assesses the effect of the business and its operations upon the interests listed in Subsections 16-10b-301(1)(a)(ii), (iii), (iv), and (v);

(b) is developed by an entity that is not controlled by the benefit corporation;

(c) is developed by an entity that both:

(i) has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) uses a balanced multistakeholder approach to develop the standard, including a reasonable public comment period; or

(d) makes the following information publicly available:

(i) about the standard:

(A) the criteria considered when measuring the overall social and environmental performance of a business; and

(B) the relative weightings, if any, of those criteria; and

(ii) about the development and revision of the standard:

(A) the identity of the directors, officers, material owners, and the governing body of the entity that developed and controls revisions to the standard;

(B) the process by which revisions to the standard and changes to the membership of the governing body are made; or

(C) an accounting of the revenue and sources of financial support for the entity, with sufficient detail to disclose a relationship that could reasonably be considered to present a potential conflict of interest.

Enacted by Chapter 394, 2014 General Session

16-10b-104. Incorporation of benefit corporation.

A person shall incorporate a benefit corporation in accordance with Chapter 10a, Part 2, Incorporation, but its articles of incorporation shall also state that it is a benefit corporation.

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16-10b-105. Election of benefit corporation status.

(1) A business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that the articles of incorporation contain, in addition to the requirements of Section 16-10a-202, a statement that the corporation is a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

(2) (a) Except as provided in Subsection (2)(b), if a domestic entity that is not a benefit corporation is a party to a merger or the exchanging entity in a share exchange and the surviving entity in the merger or share exchange is to be a benefit corporation, the plan of merger or share exchange must be approved by the domestic entity by at least the minimum status vote.

(b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.

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16-10b-106. Termination of benefit corporation status.

(1) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by Section 16-10b-104 or 16-10b-105 to be stated in the articles of incorporation of a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

(2) (a) Except as provided in Subsection (2)(b), if a plan of merger or share exchange would have the effect of terminating the status of a business corporation as a benefit corporation, the plan must be adopted by at least the minimum status vote to be effective.

(b) Subsection (2)(a) does not apply in the case of a corporation that is a party to a merger if the shareholders of the corporation are not entitled to vote on the merger pursuant to Section 16-10a-1104.

(3) A sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, is not effective unless the transaction is approved by at least the minimum status vote.

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16-10b-201. Corporate purposes.

(1) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under Section 16-10a-301.

(2) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under Section 16-10a-301 and Subsection (1). The identification of a specific public benefit under this Subsection (2) does not limit the purpose of a benefit corporation to create general public benefit under Subsection (1).

(3) The creation of general public benefit and a specific public benefit under Subsections (1) and (2) is considered in the best interests of the benefit corporation.

(4) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. To be effective, the amendment must be adopted by at least the minimum status vote.

(5) A professional corporation that is a benefit corporation does not violate Section 16-11-6 by having the purpose to create general public benefit or a specific public benefit.

Enacted by Chapter 394, 2014 General Session

16-10b-301. Standard of conduct for directors.

(1) Subject to Subsection (2), the board of directors, committees of the board of directors, and individual directors of a benefit corporation, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation:

- (a) shall consider the effects of an action or inaction upon:
 - (i) the shareholders of the benefit corporation;
 - (ii) the employees and workforce of the benefit corporation, its subsidiaries, and its suppliers;
 - (iii) the interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;
 - (iv) community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;
 - (v) the local and global environment;
 - (vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and
 - (vii) the ability of the benefit corporation to accomplish its general public benefit purpose and a specific public benefit purpose; and
- (b) may consider other pertinent factors or the interests of any other group that they consider appropriate.

(2) (a) Subject to Subsection (2)(b), in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board of directors, and individual directors of a benefit corporation need not give priority to a particular interest or factor referred to in Subsection (1) over any other interest or factor.

(b) Subsection (2)(a) does not apply if the benefit corporation has stated in its

articles of incorporation its intention to give priority to certain interests or factors related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(3) The consideration of interests and factors in the manner required by Subsections (1) and (2) does not constitute a violation of Section 16-10a-840.

(4) Except as provided in the articles of incorporation or bylaws, a director is not personally liable for monetary damages for:

(a) an action or inaction in the course of performing the duties of a director under Subsections (1) and (2) if the director performed the duties of office in compliance with Section 16-10a-840 and this section; or

(b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(5) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

Enacted by Chapter 394, 2014 General Session

16-10b-302. Benefit director.

(1) The board of directors of a benefit corporation that is a publicly traded corporation shall, and the board of directors of any other benefit corporation may, include a director, who:

(a) is designated the benefit director; and

(b) shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this chapter.

(2) (a) A benefit director shall be elected, and may be removed, in the manner provided by Sections 16-10a-801 through 16-10a-810.

(b) Except as provided in Subsection (6), the benefit director shall be an individual who is independent.

(c) The benefit director may serve as the benefit officer at the same time as serving as the benefit director.

(d) The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this Subsection (2).

(3) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by Section 16-10b-401, the opinion of the benefit director on all of the following:

(a) whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report;

(b) whether the directors and officers complied with Subsections 16-10b-301(1) and 16-10b-303(1), respectively; and

(c) if, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to act or comply in the manner described in Subsections (3)(a) and (b), a description of the ways in which the benefit corporation or its directors or officers failed to act or comply.

(4) The act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

(5) Regardless of whether the articles of incorporation or bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by Section 16-10a-841, a benefit director may not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

(6) The benefit director of a professional corporation does not need to be independent.

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16-10b-303. Standard of conduct for officers.

(1) An officer of a benefit corporation shall consider the interests and factors described in Subsection 16-10b-301(1) in the manner provided in Subsections 16-10b-301(1) and (2) if:

- (a) the officer has discretion to act with respect to a matter; and
- (b) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(2) The consideration of interests and factors in the manner described in Subsection (1) may not constitute a violation of Section 16-10a-831 or 16-10a-840.

(3) Except as provided in the articles of incorporation or bylaws of a benefit corporation, an officer is not personally liable for monetary damages for:

- (a) an action or inaction as an officer in the course of performing the duties of an officer under Subsection (1) if the officer performed the duties of the position in compliance with Section 16-10a-831 or 16-10a-840 and this section; or
- (b) failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(4) An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

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16-10b-304. Benefit officer.

(1) A benefit corporation may have an officer designated as the benefit officer.

(2) A benefit officer has:

(a) the powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

- (i) by the bylaws; or
- (ii) absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(b) the duty to prepare the benefit report required by Section 16-10b-401.

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16-10b-305. Right of action.

(1) Except in a benefit enforcement proceeding, a person may not bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(a) failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

(b) violation of an obligation, duty, or standard of conduct under this chapter.

(2) A benefit corporation may not be liable for monetary damages under this chapter for a failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(3) (a) A benefit enforcement proceeding may be commenced or maintained only:

(i) directly by the benefit corporation; or

(ii) derivatively by:

(A) a person or group of persons that owns beneficially or of record at least 2% of the total number of shares of a class or series outstanding at the time of the act or omission complained of;

(B) a director;

(C) a person or group of persons that own beneficially or of record 5% or more of the outstanding equity interests in an entity of which the benefit corporation is a subsidiary at the time of the act or omission complained of; or

(D) other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(b) A benefit corporation may provide in its articles of incorporation a greater degree of ownership by a person or group of persons than those listed under Subsection (3)(a) to bring a derivative action.

(4) For purposes of this section, a person is the beneficial owner of shares or equity interests if the shares or equity interests are held in a voting trust or by a nominee on behalf of the beneficial owner.

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16-10b-401. Preparation of annual benefit report.

(1) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(a) a narrative description of:

(i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) (A) the ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

(B) the extent to which that specific public benefit was created; and

(iii) circumstances that have hindered the creation by the benefit corporation of general public benefit or specific public benefit;

(b) an assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(i) applied consistently with the application of that third-party standard in prior benefit reports; or

(ii) accompanied by an explanation of the reasons for an inconsistent application;

(c) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(d) the statement of the benefit director described in Subsection 16-10b-302(3);

(e) an identification of the third-party standard that will be used to prepare the next benefit report of the benefit corporation and a discussion of:

(i) the process and rationale for selecting that third-party standard and, if it is different from the previous third-party standard used by the benefit corporation, the reasons for the change; and

(ii) any connection between the organization that established the third-party standard, or its directors, officers, or a holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers, or a holder of 5% or more of the outstanding shares of the benefit corporation, including a financial or governance relationship that might materially affect the credibility of the use of the third-party standard; and

(f) if the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of the persons that exercise the powers, duties, and rights and who have the immunities of the board of directors.

(2) If, during the year covered by a benefit report, a benefit director resigns, refuses to stand for reelection to the position of benefit director, or is removed from the position of benefit director, and the benefit director furnishes the benefit corporation with written correspondence concerning the circumstances surrounding the resignation, refusal, or removal, the benefit report shall include that correspondence as an exhibit.

(3) Neither the benefit report nor the assessment of the performance of the benefit corporation in the benefit report required by Subsection (1)(b) needs to be audited or certified by a third party.

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16-10b-402. Availability of annual benefit report.

(1) A benefit corporation shall send its annual benefit report required by Section 16-10b-401 to each shareholder on the earlier of:

(a) 120 days following the end of the fiscal year of the benefit corporation; or

(b) the same time that the benefit corporation delivers another annual report to its shareholders.

(2) A benefit corporation shall post all of its benefit reports on the public portion of its Internet website, if any, but financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(3) If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to a person that requests a copy, but financial or proprietary information included in the

benefit report may be omitted from the copy of the benefit report provided.

(4) (a) Concurrently with the delivery of the benefit report to shareholders under Subsection (2), the benefit corporation shall deliver a copy of the benefit report to the division for filing, but financial or proprietary information included in the benefit report may be omitted from the benefit report as delivered to the division.

(b) The division shall charge a fee established by the division in accordance with Section 63J-1-504 for filing an annual benefit report.

(c) The benefit corporation shall file the annual benefit report in addition to the annual report required by Section 16-10a-1603.

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